

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JUDITH COELHO AND DENNIS COELHO,

Plaintiff,

v.

PROMUTUAL GROUP,

Defendants.

CIVIL ACTION NO. 05-11833 NMG

**ANSWER OF MEDICAL PROFESSIONAL MUTUAL INSURANCE COMPANY
(MISNAMED IN COMPLAINT AS PROMUTUAL GROUP)**

Defendant Medical Professional Mutual Insurance Company (misnamed in the Complaint as ProMutual Group, and referred to in this Answer as "ProMutual") answers the numbered paragraphs of the Complaint as follows:

JURISDICTION

This unnumbered paragraph states a legal conclusion as to which no answer is required. To the extent an answer is required, ProMutual states that it is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph.

COUNT ONE

1. ProMutual is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Admits.

3. Paragraph 3 characterizes the legal theory of this action and, accordingly, no answer is required. To the extent an answer is required, denied.

4. Admits.

5. Denies.

6. Denies.

7. ProMutual states that the applicable insurance policies speak for themselves. Further answering, ProMutual states that it provides professional liability insurance for Alice M. Daley, M.D. and PMG Physician Associates, P.C. for the claim asserted against them by plaintiffs, and that the applicable limit of liability is \$1 million for the claim against Dr. Daley and \$2 million for the claim against PMG Physician Associates.

8. ProMutual admits that it received a letter dated June 29, 2005 from counsel for the plaintiffs, and states that the letter speaks for itself. ProMutual denies the remaining allegations of Paragraph 8.

9. ProMutual admits that it did not make an offer in its response to the letter dated June 29, 2005 from plaintiffs' counsel. ProMutual denies the remaining allegations of Paragraph 9.

10. ProMutual admits that it received a letter dated August 3, 2005 from counsel for the plaintiffs, and states that the letter speaks for itself. ProMutual denies the remaining allegations of paragraph 10.

11. Denies.

12. Denies.

13. Denies.

14. ProMutual admits that it received a letter dated August 3, 2005 from counsel for the plaintiffs, an accurate copy of which is attached to the Complaint as Exhibit 1, and states that the letter speaks for itself. ProMutual denies the remaining allegations of paragraph 14.

15. ProMutual admits that it did not make an offer of settlement in its response to the August 3, 2005 letter it received from plaintiffs' counsel. ProMutual denies the remaining allegations of paragraph 15.

16. Denies.

17. Denies.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs have failed to comply with the requirements of Mass. G.L. c. 93A, § 9, including the requirement that they give ProMutual adequate notice of their allegations and claimed damages.

Second Affirmative Defense

Plaintiffs' claim is premature, and all proceedings in this action should be stayed until plaintiffs' underlying claims against ProMutual's insureds are resolved by settlement or by entry of a final judgment and exhaustion of all appeals.

Third Affirmative Defense

Plaintiffs' claim is not ripe because plaintiffs' underlying claims against ProMutual's insureds are pending.

WHEREFORE, ProMutual respectfully requests that the Court

1. Dismiss this action, enter judgment in favor of ProMutual and grant ProMutual all such other relief as it deems just and proper; or

2. In the alternative, stay all proceedings in this action until plaintiffs' underlying claims against ProMutual's insureds are resolved by settlement or by entry of a final judgment and exhaustion of all appeals.

MEDICAL PROFESSIONAL MUTUAL
INSURANCE COMPANY (MISNAMED
IN COMPLAINT AS PROMUTUAL
GROUP)
By its attorneys,

/s/ Anne Robbins

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Dated: October 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail on October 7, 2005.

/s/ Anne Robbins